

LAW OFFICES
KOTEEN & NAFTALIN, L.L.P.
1150 CONNECTICUT AVENUE
WASHINGTON, D.C. 20036-4104

BERNARD KOTEEN*
ALAN Y. NAFTALIN
ARTHUR B. GOODKIND
GEORGE Y. WHEELER
MARGOT SMILEY HUMPHREY
PETER M. CONNOLLY
CHARLES R. NAFTALIN
GREGORY C. STAPLE
R. EDWARD PRICE
JULIE A. BARRIE
* SENIOR COUNSEL

TELEPHONE
(202) 467-5700
TELECOPY
(202) 467-5915

January 11, 1999

HAND DELIVERED

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, D.C. 20554

Re: CC Docket No. 96-45

Dear Ms. Salas:

Transmitted herewith, on behalf of TDS Telecommunications Corporation (TDS Telecom), are an original and four copies of its comments in the above-referenced proceeding. Three additional copies of this pleading, along with a diskette copy, are being hand delivered to Ms. Sheryl Todd at the Accounting Policy Division. A paper copy of the comments, along with a diskette copy, is also being taken to the Commission's contractor, ITS, Inc., for public service records duplication.

In the event of any questions concerning this matter, please communicate with this office.

Very Truly Yours,

Margot Smiley Humphrey
Margot Smiley Humphrey

Enclosure

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	

COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION

Margot Smiley Humphrey
KOTEEN & NAFTALIN, L.L.P.
1150 Connecticut Avenue, N.W.,
Suite 1000
Washington, D.C. 20036-4104
(202) 467-5700
margot.humphrey@koteen.com

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COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION

TDS Telecommunications Corporation (TDS Telecom), by its attorneys and on behalf of its 105 incumbent local exchange carriers (ILECs) providing service as the carrier of last resort to primarily rural areas in 28 states, files these comments on the Further Notice of Proposed Rulemaking (FNPRM) portion of the Commission's October 26, 1998 decision in the above-captioned proceeding,¹ which raises questions concerning qualification and support for additional, competing Eligible Telecommunications Carriers (ETCs) under §214(e) of the Communications Act of 1934, as amended.

I. INTRODUCTION AND SUMMARY

While the FNPRM focuses to some extent on wireless providers, the questions raised have broader implications for the relative responsibilities and access to support payments of all incumbent and competing carriers. It is these broader concerns that prompt TDS Telecom to comment. Similarly, the FNPRM raises detailed questions -- such as how many "free minutes"

¹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 98-278 (rel. October 26, 1998).

of service an ETC should offer to be eligible for support. However, TDS Telecom is concerned that such granular questions ignore or mask more fundamental questions about what is required to be eligible for federal universal service support. It is these more fundamental issues for which these comments seek Commission consideration and guidance for all current and potential ETCs.

TDS Telecom urges the Commission to adhere to the requirements of §254 and §214(e) in delineating appropriate duties and standards for all ETCs. For rural ILEC study areas, this means the Commission must recognize that states have the sole responsibility and authority to determine whether any additional ETC will serve the public interest. Thus, the Commission must not presume that it can impose its standards of competitive neutrality or seek to encourage additional entry in these areas unless and until the state has lawfully decided upon additional designation. The Commission should also remedy some problems and omissions in its rules for “portable” support, both under the interim rural ILEC plan and in general. To achieve genuine neutrality and “sufficient” support for the consumer benefits that Congress intends, it should not multiply the size of the support recovered from carriers and nationwide end users by providing windfalls rather than necessary support for CETCs or undercut the effectiveness of the new Federal Universal Service Fund in supporting truly high cost locations.

II. THE COMMISSION’S UNIVERSAL SERVICE AND SUPPORT PORTABILITY RULES MUST COMPLY WITH THE STATUTE AND INTENT OF CONGRESS

A. The Statute Requires State Public Interest Determinations Before Competitive or Technological Neutrality Even Becomes an Issue in Rural ILEC Areas

The Commission asks (§44) whether its universal service rules for supporting alternative ETCs succeed in being “competitively neutral” and “facilitate the provision of services eligible

for universal service support by providers ... that historically have not supplied such services.” However, for the TDS Telecom ILECs and other similarly-situated carriers that are within the Act’s definition of “rural telephone company,” 47 USC §153(37), equalizing competitors is not the paramount concern under the statute. Sections 254 and 214(e) instead manifest Congress’s intent to ensure that duplication or fragmentation of universal service support in rural ILEC areas does not adversely affect rural customers. The law provides for automatic qualification of additional ETC’s in most areas, from which the Commission might infer that competitive and technological neutrality must be a central objective of federal policy. But Congress expressly left it to the states to determine whether the public interest in a rural ILEC area will be served by more than one ETC designation. Consequently, for these areas, the Commission’s assumption that its rules must stimulate support for competitors conflicts with the law’s language and focus on universal service sustainability and the careful reservation of state authority over adding rural area ETCs.

B. The Commission’s Interim Rural Support Rules Currently Create Perverse Incentives and Windfalls for New Entrants that Seek Universal Service Support Without Shouldering Equivalent Responsibilities for High Cost Service

Section 254(e) mandates “sufficient” support to achieve the Act’s universal service purposes. The Commission’s portability rules at present have the opposite effect in rural ILEC areas from the bias against newcomers the FNPRM posits. This is because the Commission has urged states to designate new ETCs for less than an ILEC’s study area, especially where non-

contiguous areas are involved,² but has nonetheless made support “portable” based on the ILEC’s study area-wide averaged support per line.³ Section 214(e) allows an ETC (CETC) to serve a designated area either wholly through its own facilities or by reselling the ILEC’s services to supplement its facilities. The result is that a CLEC that wants CETC status can choose how much of the high costs of service to shoulder in an ILEC’s study area and how much to avoid by seeking a smaller CETC area or using resale. The costs in an ILEC study area are not uniform, but differ depending on factors such as customer density or the distance of various customers from the serving office. Thus, the new ETC can avoid incurring the cost of facilities-based service for the highest cost locations and customers, but the ILEC must serve customers throughout its study area, providing some service at rates above its costs and some at rates below its costs. The rules provide new “universal service” providers, in effect, an opportunity to arbitrage the mismatch between the area over which transitional rural ILEC support is averaged and the varying costs within the rural ILEC’s study area, by tailoring its choice of how to provide universal service. In this way, the Commission has created perverse incentives for CLECs to seek additional ETC designations to reap windfall opportunities, without benefitting consumers.

An incumbent ETC and its outlying customers may suffer an additional competitive disadvantage from the Commission’s portability rules, which provide that the ILEC will lose

² Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, ¶¶25, 129, 189-90 (1997) (USF Order), consolidated appeal pending sub nom. Texas Office of Public Utility Counsel v. FCC and USA, No. 97-60421 (5th Cir. 1997).

³ See, id., at ¶¶189, 193, 309.

averaged per-line support for all lines taken by a new ETC.⁴ This reduction in per-line support, like the support gained by the CETC, is based on the ILEC's support, even though the new ETC may serve only the low cost core of the area with its own network and serve the higher cost portions by reselling the ILEC's below-cost lines. Hence, by "competing" for support, a new ETC can both (a) serve low cost areas with its own lines, where it will get windfall support because the ILEC per line average support exceeds the cost and (b) deprive the ILEC of its average, study-area-wide per line support, while the ILEC loses its below-average cost customers and keeps the above-average-cost lines it must serve as carrier of last resort.⁵ Consequently, the rules incent manipulation that will rob customers of the "sufficient" high cost support Congress intended and distort competition.

The Commission should act quickly to preserve support for truly high cost customers and to achieve competitive and technological neutrality in those rural ILEC areas where the state decides the public interest is served by added ETC designations. It should complete its unfinished business by rectifying this anomaly in a decision on remaining reconsideration issues spawned by the May 8, 1997 universal service decision, pending for more than a year. There is simply no factual basis for presuming a need to step in to help disadvantaged competitive ETCs (CETCs).

⁴ 47 CFR §54.307(a)(4).

⁵ As discussed below, the CETC may not even face rate or service unbundling requirements to provide and charge for a basic service package confined to the defined universal services at a below cost rate.

C. The Commission Has Left Critical Unanswered Questions about the Eligibility of CETC Services for Support that Further Imperil “Sufficient” Support for High Cost Customers

While there is no unfairness toward new entrants in the rules, there are legitimate concerns about the extent of a CETC’s support eligibility, once it qualifies. Consider for example, the gaps and shortcomings in the Commission’s rules on what CETC lines become eligible for portable support, which leave crucial matters unsettled, ambiguous or mistaken. First, §54.307 makes support portable to a competitive carrier “to the extent that the competitive eligible telecommunications carrier captures an incumbent local exchange carrier’s (ILEC) subscriber lines or serves new subscriber lines in the ILEC’s service area...based on the support the ILEC receives for each line.”⁶ Unfortunately, the rules do not explain how to tell whether a CLEC line is “captured” or “new,” let alone how to tell if a customer is relying on the CETC as its universal service provider. Indeed, some potential CETCs might even think from the rule’s imprecise use of diction in a subsequent reference that a CETC is entitled to obtain support for all lines it serves in a designated area, or at least all lines it serves without reselling ILEC lines.⁷

To complicate matters, the rules reduce the support paid to an ILEC for every line for which a CLEC gets support: “The amount of universal service support provided to such incumbent local exchange carrier shall be reduced by an amount equal to the amount provided to

⁶ 47 CFR §54.307(a) (emphasis added).

⁷ Section 54.307(a)(1) carelessly uses a broader phrase in providing for the support available to a CETC, stating that a “competitive eligible telecommunications carrier shall receive support for each line it serves based on the support the ILEC receives for each line.”

such competitive eligible telecommunications carrier.”⁸ That seems to require a deduction from the ILEC’s support even if the CLEC begins to provide a “new” line to a customer in the area, even if the customer has and retains lines provided by the ILEC, its traditional universal service provider.⁹

These unanswered portability questions alone have enormous consequences for rural customers and the nation’s ratepayers. For example, if a CLEC with an existing customer base that has not been a universal service provider in the past can now get support for all the lines it is currently providing or even for all the new lines it provides after its designation, and all of its support will be deducted from the ILEC’s support, the ILEC will be deprived of support to serve the very high cost rural subscribers §254 was designed to protect. That lost support will undermine the §254 mandate for “sufficient” support. And, if the CETC serves outlying customers through resale, the ILEC will end up providing its competitor with below-cost lines for which the CETC has syphoned off a share of the support by duplicating service to less costly locations. If, in contrast, the rules are read to require support for both the wireless carrier’s lines and the ILEC’s lines, U.S. ratepayers could face an enormous universal service fund.

The portability rules are rife with such errors and uncertainties. This proceeding on how to qualify more CETCs for support is thus premature and potentially harmful to consumers. Section 254 is intended to safeguard customers, not to distort or swell universal service support.

⁸ 47 CFR §54.307(a)(4).

⁹ The USF Order (¶287) says CETC’s captured and “new” lines gain support, but “[a]t the same time, the ILEC will continue to receive support for the customer lines it continues to serve,” which conflicts with §54.307(a)(4) of the rules.

The Commission should rectify the errors and omissions in its portability rules before it goes forward with efforts to encourage carriers to vie for support rather than to compete via service improvements or rate reductions owing to greater efficiency.

D. The Commission Cannot Lawfully Provide Support for Services That Fall Short of or Exceed the Definition of Universal Services Adopted Pursuant to §254

The Commission's rules may delay prudent CLECs from deciding whether to assume the obligations of designated ETCs providing universal service because they fail adequately to spell out the extent of a CLEC's obligations if it seeks designation. The Commission is only beginning in this proceeding to address the issue of what charges a CETC can make for its "universal" service and what basic service package it must offer customers to satisfy the requirements of §214(e), but it has omitted most of the most important questions.

Rather than focusing on details about what service package particular types of carriers should provide, the Commission should clarify that all ETCs may receive support only for providing services that meet all the specifications in §54.101 and its universal service decisions. The Commission has framed the question of what basic service package a wireless CETC should be required to provide to qualify for support primarily in terms of local usage. TDS Telecom agrees that some local usage should be required as a part of universal service. However, the test for whether a basic service package meets the requirements of §§254 and 214(e) is much broader and more basic. If any kind of competitive fairness or neutrality is to prevail, then, subject only to the waivers and delays to achieve compliance the Commission has adopted or may adopt when the universal service definition "evolves" in the future, all ETCs must be held to the same definition of "universal services." Unless every CETC, regardless of its technology or service

characteristics, must meet the definition of universal service adopted by the Commission after recommendation by the §254 Joint Board and must be prepared to offer services that are added as the definition evolves, defining what all consumers should be able to obtain as reasonably and affordably priced universal services becomes pointless.

Even-handed application of the definition is necessary to protect consumers as well as for fairness among ETCs: Once a second ETC is designated, §214(e)(4) gives the original ETC the right to withdraw as an ETC as soon as the other designee obtains the facilities it needs to assume sole responsibility for universal service to the area. In other words, a narrowed definition to accommodate some new ETC's needs can translate into depriving customers in its ETC area of the universal service and network evolution Congress intended all consumers to enjoy.

The Commission should also require all ETCs to provide customers with a “realistic option” and “viable choice” of obtaining a basic service package that offers only the universal services in the §54.101 definition, or at least makes no charge to recover any costs incurred for anything other than the defined services. This requirement is necessary to ensure that the support a CETC obtains is used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended” as the statute and §54.7 require.¹⁰ This limitation of support is necessary to protect the consumers that ultimately bear the support burden and the carriers that must contribute. The purpose of universal service support is to make rates affordable for customers in high cost areas in spite of the high costs of service. There is thus no

¹⁰ TDS Telecom understands that one of the judges on the Fifth Circuit's universal service case panel questioned the legality of providing universal services bundled with other services during oral argument on the currently pending universal services issues.


reason to make U.S. ratepayers shoulder a support burden to make payments to a CETC that need not offer below-cost service or to support services that have not met the tests for the universal service definition required by §254(a)-(c).

III. CONCLUSION

The Commission is wise to be turning its attention to how the statutory provision for supporting more than the traditional single ETC will work. However, before it gets to the level of detail and the policy of encouraging multiple qualification for support this FNPRM is pursuing, it should adopt or modify rules that will fully achieve the universal service objectives of the Communications Act for consumers in high cost areas, without unnecessarily raising the cost to the nation's ratepayers or diverting the benefits to carriers rather than customers

Respectfully submitted,

TDS TELECOMMUNICATIONS CORPORATION


By: /s/ Margot Smiley Humphrey
Margot Smiley Humphrey

KOTEEN & NAFTALIN, L.L.P.
1150 Connecticut Avenue, NW
Suite 1000
Washington, D.C. 20036
(202) 467-5700
margot.humphrey@koteen.com

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